

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

PRISON LEGAL NEWS, A PROJECT FOR THE HUMAN RIGHTS DEFENSE CENTER, A NOT-
FOR-PROFIT WASHINGTON CHARITABLE CORPORATION,

Applicant,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

**APPLICATION TO THE HON. CLARENCE THOMAS
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Prison Legal News (“PLN” or “Applicant”) hereby moves for an extension of time of 30 days, to and including September 14, 2018, for the filing of a petition for a writ of certiorari. Respondent does not oppose this request.

1. The Eleventh Circuit rendered its decision on May 17, 2018 (Exhibit 1). This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. Unless an extension is granted, the deadline for filing the petition for certiorari will be August 15, 2018.

3. This case involves a critically important question concerning core free speech rights. The decision below upheld the Florida Department of Corrections’ (“FDOC”) blanket ban on PLN’s publications—which exist to inform prisoners of their

legal rights—and it did so based on an incorrect view that this Court’s precedents require virtually unfettered deference to prison officials’ contention that security risks outweigh PLN’s First Amendment freedoms.

4. PLN exists to advance and protect important constitutional liberties. For over 25 years, PLN has published *Prison Legal News*, a monthly journal of prison news and analysis aimed at informing prisoners of their rights and alerting them to unconstitutional prison practices and litigation around the country. The magazine has a monthly circulation of approximately 7,000 printed copies, and its subscribers include incarcerated individuals in all 50 state correctional systems, the federal Bureau of Prisons (“BOP”), and numerous county jails. Over the years, *Prison Legal News* has published hundreds of articles about the FDOC.

5. Since 2009, the FDOC has consistently violated PLN’s free speech rights by impounding every single one of its issues. The FDOC has defended its wholesale censorship of *Prison Legal News* by asserting that certain advertisements contained in the publication—namely advertisements involving pen pal, call forwarding, people-locator, and stamp-for-cash services—present a security threat because they are impermissibly “prominent or prevalent” within the publication. However, for years before instituting its complete censorship of the publication, the FDOC allowed *Prison Legal News* into its prisons, and the FDOC has provided no concrete examples of any instance where advertisements in *Prison Legal News* caused a specific security threat in Florida. In fact, FDOC permits inmates to engage in many activities that present the same (or greater) risks as the allegedly problematic advertisements.

6. The FDOC's censorship of PLN is a national outlier. No other state corrections agency, nor the BOP, nor any county jail, considers it necessary to institute a blanket ban of *Prison Legal News* based on its advertisements. And some states that previously censored the publication have since adopted less restrictive means of protecting against security concerns without violating PLN's free speech rights.

7. The decision below upheld the FDOC's complete censorship of *Prison Legal News* based on its view that this Court's jurisprudence requires virtually unquestioned deference to the professed security concerns of prison officials. The Eleventh Circuit's decision concluded that PLN's free speech claims necessarily fail because a prison official had testified that the FDOC's restrictions "certainly help" to advance the prison's security interests. Ex. 1 at 43 (alteration marks omitted).

8. That sort of blind deference is out of step with this Court's precedents. The Court has repeatedly emphasized that "[p]rison walls do not form a barrier separating prison inmates from the protections of the Constitution,' nor do they bar free citizens from exercising their own constitutional rights by reaching out to those on the 'inside.'" *Thornburgh v. Abbott*, 490 U.S. 401, 407 (1989) (quoting *Turner v. Safley*, 482 U.S. 78, 84 (1987)). Thus, "there is no question that publishers who wish to communicate with those who, through subscription, willingly seek their point of view have a legitimate First Amendment interest in access to prisoners." *Thornburgh*, 490 U.S. at 408. Those rights are even more important, and their abridgement even more troubling, when a prison impounds a publication, like *Prison*

Legal News, that exists to inform prisoners of their legal rights and to chronicle prison abuses. In its zeal to uphold the prison’s censorship, the decision below blew right past these fundamental principles.

9. The fact that every other prison system in the country—federal, state, and local—manages to address safety concerns while permitting the circulation of *Prison Legal News* underscores the exaggerated nature of the FDOC’s blanket ban. This Court has long held that “the policies followed at other well-run institutions would be relevant to a determination of the need for a particular type of restriction.” *Procunier v. Martinez*, 416 U. S. 396, n.14 (1974). And this Court has not hesitated to reject other states’ outlier intrusions on fundamental liberties premised on similarly speculative claims of prison security. *Cf. Holt v. Hobbs*, 574 U.S. ___ (2015) (“That so many other prisons allow inmates to grow beards while ensuring prison safety and security suggests that the Department could satisfy its security concerns through a means less restrictive than denying petitioner the exemption he seeks.”). Yet, the Eleventh Circuit declined to give any meaningful weight to this jurisprudence on the illogical premise that doing so would somehow violate this Court’s precedents.

10. Applicant’s Counsel of Record, Paul D. Clement, has substantial briefing and oral argument obligations, including a petition for rehearing in *United States v. Martoma*, No. 14-3599 (2d Cir.) (due August 8, 2018); an *amicus* brief in *Glaxosmithkline LLC v. Louisiana*, No. 18-42 (U.S.) (due August 9, 2018); an opening brief in *United States v. Ashe*, No. 18-1725 (2d Cir.) (due August 10, 2018); a petition

for certiorari in *Zappos.com, Inc. v. Stevens*, No. ___-___ (U.S.) (due August 20, 2018); an oral argument in *Int'l Bus. Machs. Corp. v. State*, No. 49A02-1709-PL-2006 (Ind. Ct. App.) (scheduled for August 21, 2018); and a petition for certiorari in *N.Y. State Rifle & Pistol Assoc., Inc. v. City of New York*, No. ___-___ (U.S.) (due September 4, 2018). As noted above, Respondent does not oppose this request.

For the foregoing reasons, Applicant requests that an extension of time to and including September 14, 2018 be granted, within which time Applicant may file a petition for a writ of certiorari.

Respectfully submitted,



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